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March 7, 2025

Cort Hitchens, Environmental Project Manager
 City of San José
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Subject: Electronic Sign on City-owned Property Project - Willow Street Billboard Site,
 Draft Initial Study/Mitigated Negative Declaration, SCH No. 2025020020,
 City of San José, Santa Clara County

Dear Cort Hitchens:

The California Department of Fish and Wildlife (CDFW) received a draft Initial Study/Mitigated Negative Declaration (IS/MND) from the City of San José (City) for the Electronic Sign on City-owned Property Project - Willow Street Billboard Site (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA, Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). CDFW's issuance of an ITP is subject to CEQA and to facilitate permit

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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issuance, any Project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. c & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Project activities described in the draft IS/MND should be designed to completely avoid any fully protected species (Fish & Game Code § 3511 and 4700) that have the potential to be present within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock;
- They are a covered species whose conservation and management are provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515); or
- Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15).

PROJECT DESCRIPTION SUMMARY

Proponent: City of San José

Objective: The objective of the Project is to construct a double-sided electronic billboard on City-owned property at the northeast corner of State Route-87 (SR-87, Guadalupe Parkway) and Willow Street. The proposed billboard would be a back-to-back design, in a 15-foot spread "V" structure, with north- and south-facing digital displays. Operation hours would be as governed by City Council Policy 6-4, which are 6 a.m. to midnight; the sign would operate seven days per week. As part of the proposed Project, 12 existing billboards within the City will be removed at their bases and no excavation would be required.

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The proposed billboard structure would be approximately 80 feet in height overall. The billboard frames would be approximately 14 feet by 48 feet (height by width), with an additional 6 inches of trim, and would be equipped with upper and lower rear catwalks measuring approximately 2.5 feet wide and extending along the length of the back of the billboards.

Primary Project activities include site preparation, followed by excavation, trenching, billboard installation, and coating. Several parts of the billboard (primarily the screens) would be assembled off-site. A hole approximately 5 feet in diameter (approximately 19.67 square feet) would be excavated to a depth of approximately 40 feet to accommodate installation of the billboard structure. Approximately 29.1 cubic yards of material would be cut, and no soil import would be used. Utility trenching for the proposed billboard would take approximately one day.

Location: The Project is located north of Willow Street and east of SR-87 in the City of San Jose, Santa Clara County (County). The coordinates for the approximate center of the Project are 37°18'57.4"N latitude 121°53'16.1"W longitude (WGS 84). The Assessor's Parcel Number is 264-48-126.

Timeframe: The year in which construction or removal will occur is not noted in the draft IS/MND. Construction of the Project is anticipated to occur over a period of approximately two weeks; primary construction would take four to six days within the two weeks. Billboard removal would take a total of one day per billboard.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Environmental Setting and Related Impact Shortcoming

COMMENT 1: Project Setting

Issue: The draft IS/MND describes the removal of 12 existing billboards within the City of San José (page 13), as part of the proposed Project, but does not provide a description of the existing environment at those locations. Without a clear understanding of the environmental setting and biological baseline conditions, it is not possible to determine potentially significant impacts the Project could have on the environment.

Specific impacts, why they would occur, and evidence they would be significant: Without a clear understanding of the environmental setting and biological baseline conditions of all aspects of the Project, it is challenging for CDFW to provide sufficient review of the draft IS/MND, assess all potential impacts of the Project, and provide adequate mitigation measures to offset the impacts.

Recommendations: CDFW recommends that, at minimum, the environmental setting be revised in a recirculated draft IS/MND to include a description of the 12 existing billboard locations on-site conditions with existing habitat types mapped within the Project Footprint. This should include, but is not limited to, discussion of special-status species which may be present, a description of the Project site's proximity to any sensitive natural communities, a description of the vegetation, and a description of the Project site's proximity to aquatic habitats, such as wetlands, vernal pools, breeding ponds, and/or waters of the U.S. or State.

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Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

And,

Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursesey sites?

COMMENT 2: Artificial Light Impact

Issue: While the Project site does not contain any sensitive natural communities, it is adjacent to the Guadalupe River, whose vegetative edge is located approximately 200 feet north of the Project parcel. Image 3 of the draft IS/MND (page 11) shows that the boundary of night illuminance would generate light and direct it towards the Guadalupe River corridor, with the light footprint extending over the Guadalupe River corridor.

CNDDDB identifies the adjacent Guadalupe River corridor as Fremont cottonwood forest and woodland (CaCode 61.130.00, Rank Global 4/State 3). Natural Communities with ranks of one to three are considered Sensitive. Artificial light pollution has the potential to significantly and adversely affect wildlife species and the habitat that supports them, including sensitive natural communities, and can serve as an impediment to wildlife movement and connectivity.

Additionally, most of the riparian habitat and vegetation between the Project parcel and the Guadalupe River has been removed as part of the adjacent Caltrain construction project. It should be noted that the Guadalupe River is an anadromous stream in the location where the Project is. For this reason, the lighting from the billboard may enter the waterway and could have a significant impact on the Guadalupe River riparian zone and associated wildlife species.

Specific impacts, why they would occur, and evidence they would be significant: Light pollution has broadly become a significant environmental hazard to various biological resources. Unlike the natural brightness created by the monthly cycle of the moon, the permanent and continuously powered lighting fixtures create an unnatural light regime that produces a constant light output. Continuous light output for 365 days a year can also have cumulatively significant impacts on fish and wildlife populations.

Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

For nocturnally migrating birds, direct mortality as a result of collisions with anthropogenic structures due to attraction to light (Gauthreaux, 2006) is another direct effect of artificial light pollution. There are also more subtle effects, such as disrupted orientation (Poot et al. 2008) and changes in habitat selection (McLaren et al. 2018).

Specifically for fish, artificial lighting can suppress the immune system of fish resulting in increased pathogen and parasite infections (Leonardi and Klempau 2003, Navara and Nelson 2007). Artificial lighting can disrupt feeding patterns of juvenile salmon (Valdimarsson et al. 1997). Artificial night lighting has also been found to impact juvenile salmonid overwintering success by delaying the emergence

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of salmonids from benthic refugia and reducing their ability to feed during the winter (Contor and Griffith 1995). Salmonids also use changes in ambient light to guide their migration patterns, which can be disrupted by artificial lighting (Grau et al. 1981).

Based on the foregoing, impacts to sensitive natural communities and native resident or migratory fish or wildlife species must be considered and evaluated under CEQA (CCR: Title 14, Div. 6, Chap. 3, Appendix G).

Recommendation: CDFW recommends the draft IS/MND analyze feasible relocation or redesign of Project infrastructure that would avoid or reduce the Project’s significant impacts to California sensitive natural communities and native resident or migratory fish or wildlife species. Relocation or redesign options may include moving the billboard further from the Guadalupe River or adjusting the billboard display away from the Guadalupe River so that the boundary of illuminance does not enter the Guadalupe River or associated riparian corridor.

Recommended Mitigation Measures: To reduce potential impacts to California sensitive natural communities and native resident or migratory fish or wildlife species to less-than-significant, CDFW recommends replacing MM BIO-3 with the mitigation measures below.

Mitigation Measure BIO 3.1 (Light Output Analysis): CDFW recommends the draft IS/MND provide an evaluation of changes to lighting use at the Project site to assess potential impacts to biological resources such as birds, bats, fish, and reptiles and their habitats in the vicinity of the Project location. As part of this evaluation, the Lead Agency should prepare Isolux Diagrams that note current light levels present during pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project. If an increase in light output from current levels to the projected future levels is evident additional avoidance, minimization or mitigation shall be developed in coordination with the natural resource agencies to offset indirect impacts to species that reside in California sensitive natural communities. Within 60 days of Project completion the Lead Agency shall conduct a ground survey that compares projected future light levels with actual light levels achieved upon completion of the Project through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered additional avoidance, minimization or mitigation measures may also be required in coordination with the natural resource agencies.

Mitigation Measure BIO 3.2 (Luminance level): During the night hours, which commence no later than one hour after sunset, luminance levels from the billboard facing the Guadalupe River Corridor shall not exceed the maximum values provided in the Table below as outlined in the International Dark-Sky Association Guidance for Electronic Message Centers (EMCs) (see online at <https://darksky.org/resources/guides-and-how-tos/electronic-billboards/>):

Lighting Zone	Nighttime Maximum Luminance (cd/m ²)
<p>LZ0: No ambient lighting Areas where the natural environment will be seriously and adversely affected by lighting, and in which human activity is subordinate in importance to nature. This is the recommended default zone for undeveloped rural areas, including wilderness areas, parks and preserves.</p>	0
<p>LZ1: Low ambient lighting Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is</p>	20

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adapted to low light levels. This is the recommended default zone for rural and low-density residential areas.	
LZ2: Moderate ambient lighting Areas of human activity where the vision of human residents and users is adapted to moderate light levels. This is the recommended default zone for light-commercial business districts and high-density or mixed-use residential districts.	40
LZ3: Moderately high ambient lighting Areas of human activity where the vision of human residents and users is adapted to moderately high light levels. This is the recommended default zones for business districts in large cities.	80
LZ4: High ambient lighting Areas of human activity where the vision of human residents and users is adapted to high light levels. Most cities do not have areas that meet this criterion. This is not a default zone.	160

Mitigation Measure BIO 3.3 (Curfew): The billboard facing the Guadalupe River Corridor shall be switched off completely after 11 p.m. and shall remain off until one hour before sunrise as outlined in the International Dark-Sky Association Guidance for Electronic Message Centers (EMCs) (see online at <https://darksky.org/resources/guides-and-how-tos/electronic-billboards/>).

II. Closely Related Past, Present, and Reasonably Foreseeable Probable Future Projects

COMMENT 3: Cumulative Impacts to Biological Resources

Issue: The Project site is part of an ongoing multi-agency major construction project led by CalTrain to reconstruct the train bridge over the Guadalupe River.

CEQA Guidelines §15355 defines a cumulative impact as the condition under which two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The cumulative impact from several projects is the change in the environment which results from the incremental impact of the Project when added to other closely related past, present, and reasonably foreseeable probable future projects.

CEQA Guidelines § 15130(b)(3) states that Lead Agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used. CEQA Guidelines § 15130(b)(2) states that factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type.

Specific impacts, why they would occur, and evidence they would be significant:

While the Caltrain construction project was anticipated to be completed by 2025, the Project has been delayed and therefore, the anticipated completion timeline has been extended and is unknown. As part of the Caltrain construction project, the majority of habitat and vegetation between the Project parcel and the Guadalupe River including the riparian zone has been removed.

The draft IS/MND states that if tall trees are planted and allowed to grow along the top of the riparian bank of the Guadalupe River, they would block the light that escapes from the billboard (page 58). It is true that as part of the Caltrain construction project, the area will be revegetated with native plants and trees. However, once the revegetation effort is completed, it will take many years for the plants and trees to grow tall enough to create a riparian canopy. Additionally, it is

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unknown when the plants and trees will be planted. For these reasons, the lighting from the billboard may enter the waterway and could have a significant impact on the Guadalupe River, associated riparian zone, and wildlife species.

Recommendations: The draft IS/MND should disclose cumulative impacts, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less-than-significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species should be considered cumulatively considerable. This should include impacts of noise, light, construction, and operations on biological resources.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the draft IS/MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Melony Wood, Environmental Scientist, at (707) 428-2002 or Melony.Wood@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species and Commercially/Recreationally Important Species

ec: Office of Planning and Research, State Clearinghouse, (SCH No. 2025020020)
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov
Jason Faridi, CDFW Bay Delta Region – Jason.Faridi@wildlife.ca.gov

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ATTACHMENT 1: Special-Status Species

Species	Status
Birds	
Cooper's hawk (<i>Accipiter cooperii</i>)	State Watch List (SWL)
Fish	
Pacific lamprey (<i>Entosphenus tridentatus</i>)	Species of Special Concern (SSC)
riffle sculpin (<i>Cottus gulosus</i>)	SSC
southern coastal roach (<i>Hesperoleucus venustus subditus</i>)	SSC
steelhead - central California coast DPS (<i>Oncorhynchus mykiss irideus</i> pop. 8)	FT (Federally Threatened), SSC
Mammals	
American badger (<i>Taxidea taxus</i>)	SSC
pallid bat (<i>Antrozous pallidus</i>)	SSC
Reptiles	
western pond turtle (<i>Actinemys marmorata</i>)	Proposed FT, SSC